

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

REBECCA KLYMN,

Plaintiff,

21-CV-6488-JLS-LGF

vs.

MATTHEW ROSENBAUM,
MONROE COUNTY SUPREME COURT,
UNIFIED COURT SYSTEM of the STATE
OF NEW YORK, OFFICE of COURT
ADMINISTRATION, OFFICE of the MANAGING
INSPECTOR GENERAL for BIAS MATTERS,
COSMAS GRANT, RONALD PAWELCZAK,
ANN MARIE TADDEO, CAROLYN GRIMALDI,
MARGARET ALLEN, and AMY FIELDS,
Defendants.

ATTORNEY'S AFFIRMATION
IN SUPPORT OF MOTION FOR
PERMISSION TO CONDUCT
LIMITED PRE-ANSWER
DISCOVERY

State of New York)
County of Erie)

Anna Marie Richmond, an attorney admitted to practice in the State of New York affirms
under the penalties of perjury:

1. I am one of the attorneys for the Plaintiff in the above-captioned matter; I make
this affirmation in support of Plaintiff's motion for permission to conduct limited pre-answer
discovery pursuant to Fed. R. Civ. P. 26(d)(1).

2. The initial complaint in this matter was filed on July 16, 2021, Item No. 1, and
promptly served upon the defendants. Items Nos. 6, 7, 8, 9.

3. The defendants moved to dismiss in November 2021. Items Nos. 17, 19, 21,

4. Plaintiff moved for permission to file an amended complaint while the motion to
dismiss was pending, Item No. 42, and filed that amended complaint with the Court's permission
on August 30, 2022. Item No. 49.

5. The Court permitted the defendants to supplement their pending motions to dismiss in order to address the allegations in the Amended Complaint, Item No. 48, and on November 15, 2022, the Court entered Orders, granting the motions to dismiss in part, and referring the case to the Honorable Leslie G. Foschio pursuant to 28 USC § 636(b)(1)(A) and (B). Items 58 and 59.

6. The Court's Decision and Order allowed the following claims to proceed:

- a. Plaintiff's claims against Defendant Rosenbaum pursuant to 42 USC § 1983 and the New York Human Rights Law ("NYHRL"),
- b. Plaintiff's NYHRL claims against the Individual Defendants, and
- c. Plaintiff's Title VII claims against the State Court Defendants to the extent that they post-date Rosenbaum's resignation from judicial office in December 2019. *Id.*, pp. 48-49.

7. The Court also granted Plaintiff leave to amend her Section 1983 claims against the Individual Defendants "to show any requisite personal involvement." *Id.*, p. 48.

8. On December 21, 2022, Plaintiff moved for permission to file a second amended complaint, that, in addition to alleging Section 1983 claims against the Individual Defendants and eliminating claims dismissed by the Court, added state law tort claims against Defendant Rosenbaum pursuant to the New York Adult Survivors Act, and added a conspiracy claim under 42 USC § 1985(3) against Defendants Rosenbaum, Pawelczak, Taddeo, Allen and Fields. Item No. 65.

9. The Defendants opposed Plaintiff's motion. Items Nos. 69, 70, 71, 72, and on May 30, 2023, this Court issued a Decision and Order granting Plaintiff's motion as to the Title VII claim asserted against the State Court Defendants, the NYHRL claim against Defendant

Rosenbaum and the Individual Defendants based upon conduct occurring prior to Rosenbaum's resignation, and the Section 1985 conspiracy claims. Item 74, p. 49.

10. The Magistrate Judge denied Plaintiff's motion to replead her Section 1983 Fourteenth Amendment claims against the Individual Defendants and the NYSHRL claim based upon conduct occurring after December 31, 2019 with prejudice, but granted her leave to replead her First Amendment retaliation claim. *Id.*

11. All the parties filed objections to the Decision and Order, and the Individual Defendants moved for reconsideration of the District Judge's November 15, 2022 decision. Items Nos. 78, 80, 81, 82.

12. On August 11, 2023, Judge Sinatra issued a Decision and Order, overruling all of the parties' objections and denying the motion for reconsideration. Item No. 92.

13. This matter has now been pending for over two years.

14. Plaintiff filed her Second Amended Complaint on September 13, 2023.

15.

16. Although Plaintiff anticipates that some or all of the Defendants will again move to dismiss, this case will move forward to discovery notwithstanding any additional motion(s) to dismiss filed by the Defendants.

17. The only cause of action contained in the Second Amended Complaint that was not previously approved by this Court and by the Honorable John L. Sinatra is the Second Cause of Action.

18. When issue is formally joined in this matter, Plaintiff anticipates that the Court will require the Parties to confer and report pursuant to Fed. R. Civ. P. 26(f), and thereafter will issue a scheduling order pursuant to Fed. R. Civ. P. 16(b).

19. Plaintiff intends to request permission to file an additional amended complaint if warranted by information Plaintiff obtains during discovery.

20. In the interest of judicial economy, preservation of evidence, and in order to move this case forward as expeditiously as possible, Plaintiff seeks permission to serve limited document requests upon the Defendants at this time, to be answered within a reasonable length of time, in order to ensure that 1) all necessary parties have been joined, 2) the issues are clearly presented to the Court, and 3) all available causes of action have been presented.

WHEREFORE, Plaintiff respectfully requests this Court to issue an Order directing Defendants to respond to the Document Requests submitted herewith within thirty days of the Court's Order.

Dated: Buffalo, NY
September 18, 2023

/s/ Anna Marie Richmond
Anna Marie Richmond, Esq.